



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

DEC 10 2008

Lori Sherwood

Rockville, Maryland 20853

RE: MUR 5970  
Donna Edwards et al.

Dear Ms. Sherwood:

On October 22, 2008, the Federal Election Commission reviewed the allegations in your complaint dated January 29, 2008, and found that on the basis of the information provided in your complaint, and information provided by the respondents, there is no reason to believe any of the respondents violated the Act. Accordingly, on October 22, 2008, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analyses, which more fully explain the Commission's findings, are enclosed.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,

*Julie K. McConnell / eip*

Julie K. McConnell  
Assistant General Counsel

Enclosures

Factual and Legal Analyses

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1  
2 **FEDERAL ELECTION COMMISSION**

3 **FACTUAL AND LEGAL ANALYSIS**  
4

5 **RESPONDENTS:** Donna Edwards MUR: 5970  
6 Donna Edwards for Congress and  
7 Janice Edwards, in her official capacity as treasurer  
8  
9

10 **I. INTRODUCTION**  
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12 This matter was generated by a complaint filed with the Federal Election Commission by  
13 Lori Sherwood. See 2 U.S.C. § 437g(a)(1). The complaint alleges that Donna Edwards for  
14 Congress and Janice Edwards, in her official capacity as Treasurer ("Edwards Committee" or  
15 "Committee"), and Donna Edwards, a congressional candidate in Maryland, accepted around  
16 \$130,000 in contributions from organizations that benefitted from her work in the private sector.  
17 The complaint alleges that many organizations made excessive contributions and excessive in-  
18 kind contributions through coordination with her Committee. The complaint also alleges that  
19 certain 501(c)(3) groups "actively engaged in prohibited activities," although the complaint gives  
20 no specifics about such activity or how it violates FECA. The complaint further alleges that the  
21 Committee and other respondents violated reporting provisions of the Act due to the above  
22 violations.

23 **II. FACTUAL AND LEGAL ANALYSIS**

24 The complaint makes many broad allegations regarding "potentially questionable"  
25 relationships among various groups, persons employed by or directing those groups, and  
26 Edwards. The complaint suggests that these questionable relationships have benefited the  
27 Edwards campaign through unreported, excessive contributions, and excessive in-kind

1 contributions. While the complaint alleges very few facts that implicate FECA, the allegations  
2 can be divided into three distinct groups: (1) those related to her private sector work; (2) those  
3 related to organizations that supported her candidacy; and (3) third-party vendors and  
4 organizations located at the same address as these vendors.

5 **A. Donna Edwards' Work in the Private Sector**

6 Many of the allegations in the complaint focus on Edwards' role as Executive Director of  
7 The ARCA Foundation ("ARCA") and ARCA's relationship to other non-profit groups. ARCA  
8 is a 501(c)(3) organization "dedicated to the pursuit of social equity and justice." See  
9 [www.arcafoundation.org/mission/htm](http://www.arcafoundation.org/mission/htm). As Executive Director since January 2000, Edwards  
10 reviews grant proposals and makes recommendations to the ARCA Board of Directors regarding  
11 which proposals to fund. Edwards has taken leaves of absence from ARCA during two  
12 campaigns for federal office. On April 17, 2006, Edwards filed her Statement of Candidacy for  
13 the 2006 Primary Election and took a leave of absence from June 1, 2006 through September 15,  
14 2006. On April 27, 2007, she filed her Statement of Candidacy for the 2008 Primary Election  
15 and took a leave of absence from August 31, 2007 through February 15, 2008.

16 The complaint alleges that Edwards, through ARCA, gave grants to the League of  
17 Conservation Voters ("LCV") and Friends of the Earth ("FOE"), and in return those groups  
18 contributed to the Committee, constituting unreported and excessive in-kind contributions. In  
19 her response, Edwards states that she makes recommendations on grant proposals to the ARCA  
20 Board but she has no authority to grant funds from ARCA. Edwards acknowledges that her  
21 Committee received contributions from the PACs of some of the respondents and from

individuals employed by them, but she states that ARCA grants money to organizations on the merits of the grant application and "not based on any anticipated or possible political benefit."

The Act, as amended by BCRA, provides that no person shall make contributions to any candidate and his or her authorized political committee with respect to any election for federal office, which, in the aggregate, exceed \$2,300. 2 U.S.C. § 441a(a)(1)(A). Further, candidates and political committees are prohibited from knowingly accepting any contributions in excess of the Act's limitations. 2 U.S.C. § 441a(f). Political committees must report receipts in their disclosure reports. 2 U.S.C. §§ 434(a) and (b).

The following chart summarizes the complaint allegations and analysis.

CHART 1

RESPONDENT	COMPLAINT ALLEGATIONS	RESPONSE	ANALYSIS
Donna Edwards and Donna Edwards for Congress, and Janice Edwards, in her official capacity as Treasurer	Edwards is the Executive Director of ARCA. ARCA gave more than \$4 million in grants to 39 organizations that made \$138,500 in contributions to her committee.	It is not clear what is being alleged. Donna Edwards only makes recommendations regarding grant recipients; the ARCA Board of Directors votes to determine grant recipients. In addition, Edwards took leaves of absence from ARCA during her campaigns.	There is no information suggesting that contributions to Edwards from respondent PACs and individuals employed by respondents were given in exchange for grants to the respondents from ARCA. Therefore, there is no reason to believe that (1) Edwards violated 2 U.S.C. § 441a(f) by knowingly accepting excessive contributions or excessive in-kind contributions from any respondent, or (2) the Edwards Committee violated 2 U.S.C. § 441a(f) by knowingly accepting such contributions or 2 U.S.C. § 434(b) by failing to report any such contributions.

RESPONDENT	COMPLAINT ALLEGATIONS	RESPONSE	ANALYSIS
ARCA	ARCA grants to organizations are excessive, in-kind contributions to Edwards because those organizations in-turn made contributions to Edwards.		There is no information suggesting that contributions to Edwards from respondent PACs and individuals employed by respondents were given in exchange for grants to the respondents from ARCA. Therefore, there is no reason to believe that (1) Edwards violated 2 U.S.C. § 441a(f) by knowingly accepting excessive contributions or excessive in-kind contributions from any respondent, or (2) the Edwards Committee violated 2 U.S.C. § 441a(f) by knowingly accepting such contributions or 2 U.S.C. § 434(b) by failing to report any such contributions.
League of Conservation Voters	ARCA gave money to LCV. LCV gave money to Edwards and promoted her campaign.		LCV PAC made a contribution to Edwards, and individuals associated with LCV made individual contributions, all within legal limits. There is no information suggesting that contributions to Edwards from LCV's PAC and individuals employed by LCV were given in exchange for a grant to LCV Education Fund. Therefore, there is no reason to believe that: (1) Edwards violated 2 U.S.C. § 441a(f) by knowingly accepting excessive contributions or excessive in-kind contributions from any respondent, or (2) the Edwards Committee violated 2 U.S.C.

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RESPONDENT	COMPLAINT ALLEGATIONS	RESPONSE	ANALYSIS
			§ 441a(f) by knowingly accepting such contributions or 2 U.S.C. § 434(b) by failing to report any such contributions.
Friends of the Earth	ARCA gave money to FOE. FOE endorsed Edwards and contributed to her campaign through board members, employees and its PAC.	.	There is no information suggesting that contributions to Edwards from FOE's PAC and its president were given in exchange for grants to FOE from ARCA. Therefore, there is no reason to believe that: (1) Edwards violated 2 U.S.C. § 441a(f) by knowingly accepting excessive contributions or excessive in-kind contributions from any respondent, or (2) the Edwards Committee violated 2 U.S.C. § 441a(f) by knowingly accepting such contributions or 2 U.S.C. § 434(b) by failing to report any such contributions.

**B. Organizations that Supported Donna Edwards by Endorsing Her or Making Independent Expenditures on Her Behalf**

The complaint also alleges that the Committee and certain respondents coordinated with each other such that the resulting communications constituted excessive, in-kind contributions. Based on the available information, it appears that independent expenditure campaigns were conducted in support of Edwards' candidacy and Edwards received endorsements.

Under the Act and Commission regulations, the terms "contribution" and "expenditure" include any gift of money or "anything of value" made by any person for the purpose of

1 influencing a Federal election. *See* 2 U.S.C. § 431(8)(A)(i) and (9)(A)(i); 11 C.F.R. § 100.52(a)  
2 and 100.111(a). The phrase “anything of value” includes all in-kind contributions. *See* 11 CFR  
3 § 100.52(d)(1) and 100.111(e)(1). In-kind contributions include expenditures made by any  
4 person “in cooperation, consultation, or concert, with, or at the request or suggestion of” a  
5 candidate, a candidate’s authorized committees, or their agents. 2 U.S.C. § 441a(a)(7)(B)(i).

6 Commission regulations specify a three-prong test to determine whether a payment for a  
7 communication becomes an in-kind contribution as a result of coordination between the person  
8 making the payment and a candidate. *See* 11 C.F.R. § 109.21(a)(1)–(3). Under the first prong of  
9 the coordinated communication test, the communication must be paid for by a person other than  
10 a candidate, a candidate’s authorized committee, a political party committee, or agents of any of  
11 the foregoing. *See* 11 C.F.R. § 109.21(a)(1). Under the second prong, the communication must  
12 satisfy one of the four content standards set forth in 11 C.F.R. § 109.21(c).<sup>1</sup> Under the third

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<sup>1</sup> After the decision in *Shays v. FEC*, 414 F.3d 76 (D.C. Cir. 2005) (Court of Appeals affirmed the District Court’s invalidation of the fourth, or “public communication,” content standard of the coordinated communications regulation), the Commission made revisions to 11 C.F.R. § 109.21 that became effective July 10, 2006. In a subsequent challenge by Shays, the U.S. District Court for the District of Columbia held that the Commission’s content and conduct standards of the coordinated communications regulation at 11 C.F.R. § 109.21(c) and (d) violated the Administrative Procedure Act; however, the court did not vacate the regulations or enjoin the Commission from enforcing them. *See Shays v. FEC*, 508 F.Supp.2d 10, 70-71 (D.D.C. Sept. 12, 2007) (NO. CIV.A. 06-1247 (CKK)) (granting in part and denying part the respective parties’ motions for summary judgment). Recently, the D.C. Circuit affirmed the district court with respect to, *inter alia*, the content standard for public communications made before the time frames specified in the standard, and the rule for when former campaign employees and common vendors may share material information with other persons who finance public communications. *See Shays v. FEC*, \_\_\_ F.3d \_\_\_, (D.C. Cir. 2008).

1 prong, the communication must satisfy one of the five conduct standards set forth in 11 C.F.R.  
2 § 109.21(d).<sup>2</sup>

3 The allegations in the complaint were vague and speculative. The following chart  
4 summarizes the allegations and analysis:

5 CHART 2

RESPONDENT	COMPLAINT ALLEGATIONS	RESPONSE	ANALYSIS
League of Conservation Voters	ARCA gave money to LCV. LCV gave money to Edwards and promoted her campaign. There's an "appearance of coordination."	.	The complaint's allegations are vague, and it appears that Edwards was ex-communicated by granting her a leave of absence from the LCV Board of Directors. Based on the absence of facts alleging conduct that would constitute coordination, there is no information that the conduct standard of the coordination regulations has been met. See 11 C.F.R. § 109.21(d). Therefore, there is no reason to believe that (1) Edwards violated 2 U.S.C. § 441a(f) by knowingly accepting excessive contributions or excessive in-kind contributions in the form of a coordinated communication, or (2) the Edwards Committee violated 2 U.S.C. § 441a(f) by knowingly accepting such contributions or 2

<sup>2</sup> The conduct prong is satisfied where any of the following types of conduct occurs: (1) the communication was created, produced or distributed at the request or suggestion of a candidate or his campaign; (2) the candidate or his campaign was materially involved in decisions regarding the communication; (3) the communication was created, produced, or distributed after substantial discussions with the campaign or its agents; (4) the parties contracted with or employed a common vendor that used or conveyed material information about the campaign's plans, projects, activities or needs, or used material information gained from past work with the candidate to create, produce, or distribute the communication; (5) the payor employed a former employee or independent contractor of the candidate who used or conveyed material information about the campaign's plans, projects, activities or needs, or used material information gained from past work with the candidate to create, produce, or distribute the communication; or (6) the payor republished campaign material. See 11 C.F.R. § 109.21(d).



RESPONDENT	COMPLAINT ALLEGATIONS	RESPONSE	ANALYSIS
			U.S.C. § 434(b) by failing to report any such contributions.
EMILY's List and Ranny Cooper, in his official capacity as Treasurer	Edwards and EMILY's List have "clearly joined forces." EMILY's list sent an email promoting Edwards' candidacy, and it was approved and authorized by Edwards.	The Edwards Committee states in its response that it paid EMILY's List for web services and properly reported those expenditures.	The complaint does not allege facts that state a violation of the Act. Moreover, the Committee paid for the communication. Thus, the payment prong of the coordination regulations is not met. See 11 C.F.R. § 109.21(a)(1). Therefore, there is no reason to believe that (1) Edwards violated 2 U.S.C. § 441a(f) by knowingly accepting excessive contributions or excessive in-kind contributions in the form of a coordinated communication, or (2) the Edwards Committee violated 2 U.S.C. § 441a(f) by knowingly accepting such contributions or 2 U.S.C. § 434(b) by failing to report any such contributions.
1199 SEIU and 1199 SEIU Federal Political Action Fund ("1199 SEIU PAC") and Patrick Gaspard, in his official capacity as Treasurer	SEIU disseminated campaign literature. It may have "collaborated" with Edwards. Also, Edwards and Anna Burger, the SEIU national political head, co-founded They Work For Us, Inc. (see below).	The Edwards campaign manager states that no one from the Committee participated in the creation or dissemination of any literature intended for distribution beyond the Union membership.	The complaint's broad legal conclusion of "collaboration" is not supported by facts. It appears that the conduct standard of the coordination regulations has not been met. See 11 C.F.R. § 109.21(d). The Edwards Committee's response leaves open the possibility that her campaign worked on union communications to its restricted class, but this activity would not constitute coordination because the regulation's content standard would not be met, see 11 C.F.R. § 109.21(c), and would be permissible under 11 C.F.R. §§ 114.2(c) and 114.3(a).

RESPONDENT	COMPLAINT ALLEGATIONS	RESPONSE	ANALYSIS
			Therefore, there is no reason to believe that (1) Edwards violated 2 U.S.C. § 441a(f) by knowingly accepting excessive contributions or excessive in-kind contributions in the form of a coordinated communication, or (2) the Edwards Committee violated 2 U.S.C. § 441a(f) by knowingly accepting such contributions or 2 U.S.C. § 434(b) by failing to report any such contributions.
They Work for Us, Inc. ("TWFU")	TWFU "apparently facilitated placement of political ads in conjunction with SEIU." TWFU has become a conduit for campaign contributions and an alleged 501(c)(4) "lobbying wing. Edwards coordinated with TWFU.	The Edwards' campaign manager attests that no one from the Committee participated in any literature or ad that may have been sent by TWFU.	<p>The complaint does not allege facts that state a violation of the Act. TWFU did fund a radio broadcast that referred to Edwards' opponent shortly before the February 2008 Primary. See TWFU Response to RFAI, May 22, 2008. TWFU filed a Form 9 with the Commission to disclose this Electioneering Communication (albeit late). We have not been able to obtain a copy of the radio ad.</p> <p>Based on the facts alleged and the response, there is no information that the conduct standard of the coordination regulations has been satisfied. Moreover, the Edwards campaign manager specifically states that no one from the campaign staff participated on any literature or ad with TWFU. Therefore, there is no reason to believe that (1) Edwards violated 2 U.S.C. § 441a(f) by knowingly accepting excessive contributions or excessive in-kind contributions in the form of a coordinated</p>

RESPONDENT	COMPLAINT ALLEGATIONS	RESPONSE	ANALYSIS
			communication, or (2) the Edwards Committee violated 2 U.S.C. § 441a(f) by knowingly accepting such contributions or 2 U.S.C. § 434(b) by failing to report any such contributions.
Communities Voting Together, a public advocacy, unincorporated association with a related "327" group.	CVT disseminated a mailer, which constitutes an excessive and unreported contribution. CVT hired canvassers to assist the Edwards campaign.	The Edwards campaign manager attests that the Committee was not involved in the production or dissemination of the CVT communications.	The response sufficiently rebuts the complaint's vague allegations that CVT and Edwards coordinated the CVT leaflets. The 2006 leaflet, and purportedly similar 2008 leaflet, are issue focused and ask the reader to call Wynn to explain his energy policies. Therefore, there is no reason to believe that (1) Edwards violated 2 U.S.C. § 441a(f) by knowingly accepting excessive contributions or excessive in-kind contributions in the form of a coordinated communication, or (2) the Edwards Committee violated 2 U.S.C. § 441a(f) by knowingly accepting such contributions or 2 U.S.C. § 434(b) by failing to report any such contributions.

**C. Third-Party Vendors and Organizations Located at the Same Address as those Vendors**

The complaint further alleges that several third parties made excessive in-kind contributions to the Edwards committee. It also alleges that the Edwards committee made expenditures to non-profit organizations and that many of these organizations must have collaborated because they have the same address. The following chart summarizes the allegations and analysis:

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CHART 3

RESPONDENT	COMPLAINT ALLEGATIONS	ANALYSIS
SEIU Local 100	SEIU Local is at the same address as CVT, <i>see supra</i> Chart 2, and ACORN (see below). The chief organizer of Local 100 is the founder of ACORN.	The facts alleged do not state a FECA violation.
Citizens Consulting, Inc.	No allegations.	The facts alleged do not state a FECA violation.
Citizens Services, Inc., a political consulting firm	The Edwards committee paid \$76,866 to Citizens Services Inc. for get-out-the-vote activities. This non-profit received money in a coordinated effort and engaged in political activity.	The facts alleged do not state a violation of the Act.
ACORN	ACORN has made independent expenditures on behalf of Edwards.	The facts alleged do not state a FECA violation.

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT: Friends of the Earth**

**MUR: 5970**

**I. INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission by Lori Sherwood. See 2 U.S.C. § 437g(a)(1).

**II. FACTUAL AND LEGAL ANALYSIS**

Friends of the Earth ("FOE") is a non-profit environmental organization. The complaint alleges that FOE made excessive in-kind contributions to Donna Edwards for Congress ("Committee"). Donna Edwards is the Executive Director of the ARCA Foundation ("ARCA"). The complaint alleges that because ARCA gave money to FOE, FOE gave money to Edwards through FOE board members, employees, and its political action committee. The complaint alleges the FOE contributions constitute excessive in-kind contributions and further alleges that FOE endorsed Edwards.

FOE states that it is a 501(c)(3) organization and did not endorse Edwards. It further states that the FOE PAC and FOE's president made legal contributions to the Edwards Committee.

There is no information suggesting that contributions to Edwards from FOE's PAC and its president were given in exchange for grants to FOE from ARCA. Therefore, there is no reason to believe that FOE violated 2 U.S.C. § 441a(a)(1) by making excessive in-kind contributions to Edwards.

**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT: ACORN**

**MUR: 5970**

**I. INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission by Lori Sherwood. See 2 U.S.C. § 437g(a)(1).

**II. FACTUAL AND LEGAL ANALYSIS**

The complaint states that the Association of Community Organizations for Reform Now ("ACORN") has made independent expenditures on behalf of Donna Edwards for Congress ("Committee"). The complaint appears to allege that a non-profit organization was "actively involved" in making independent expenditures.

ACORN is a national grass-roots community organization with 1,200 local chapters. ACORN states that it has not made independent expenditures on behalf of Edwards. In 2006, ACORN's Maryland chapter provided field services to the Edwards campaign, as a subcontractor. ACORN states that it did not make any public communications in 2006 or 2008 that referred to Edwards. ACORN acknowledges that Edwards attended a press conference where ACORN announced its endorsement of her for the 2008 primary. Other than the endorsement, ACORN never made a communication to the public that expressly advocated the election of Edwards or defeat of Wynn.

The facts alleged do not state a FECA violation. ACORN appears to have been named as a respondent due to the address its shares with certain other organizations in New Orleans.

**ACORN Factual and Legal Analysis  
MUR 5970**

- 1 ACORN appears to have operated as a sub-vendor to another organization. In addition, although**
- 2 not alleged in the complaint, the available information suggests that ACORN properly handled**
- 3 the announcement of its endorsement of Donna Edwards, pursuant to 11 C.F.R. § 114.4(e)(6).**
- 4 There is no reason to believe that ACORN violated the Act.**

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT: ARCA Foundation**

**MUR: 5970**

**I. INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission by Lori Sherwood. See 2 U.S.C. § 437g(a)(1).

**II. FACTUAL AND LEGAL ANALYSIS**

Donna Edwards for Congress ("Committee") is the authorized candidate committee for Donna Edwards, who was running for Congress from Maryland in the 2006 and 2008 primaries. The ARCA Foundation ("ARCA") is a 501(c)(3) organization "dedicated to the pursuit of social equity and justice." See [www.arcafoundation.org/mission/htm](http://www.arcafoundation.org/mission/htm). As Executive Director of ARCA since January 2000, Donna Edwards reviews grant proposals and makes recommendations to the ARCA Board of Directors regarding which proposals to fund. Edwards has taken leaves of absence from ARCA during two campaigns for federal office: June 1, 2006 through September 15, 2006 (2006 Primary Election) and August 31, 2007 through February 15, 2008 (2008 Primary Election).<sup>1</sup>

The complaint alleges that ARCA made excessive in-kind contributions to the Committee in connection with the work of Edwards. Specifically, the complaint alleges that the grants ARCA gave to various organizations are excessive, in-kind contributions to Edwards because those organizations in-turn made contributions to the Committee.

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<sup>1</sup> Edwards filed Statements of Candidacy on April 17, 2006 and April 27, 2007.



1 ARCA states that it only makes grants to other 501(c)(3) organizations, not political  
2 committees. ARCA further states that the ARCA Board decides which organizations receive  
3 grants, not Donna Edwards. ARCA concludes that its grants to third parties are not contributions  
4 to Edwards and that the complaint fails to allege any facts showing that ARCA funds benefited  
5 either of the Edwards' campaigns in any way.

6 The Act, as amended by BCRA, provides that no person shall make contributions to any  
7 candidate and his or her authorized political committee with respect to any election for federal  
8 office, which, in the aggregate, exceed \$2,300. 2 U.S.C. § 441a(a)(1)(A).

9 There is no information suggesting that contributions to Edwards from third-party  
10 organizations and individuals employed by those organizations were given in exchange for grants  
11 from ARCA. Therefore, there is no reason to believe that ARCA violated 2 U.S.C. § 441a(a)(1)  
12 by making excessive in-kind contributions to Donna Edwards for Congress.

**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT: Citizens Consulting, Inc.**

**MUR: 5970**

**I. INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission by Lori Sherwood. See 2 U.S.C. § 437g(a)(1).

**II. FACTUAL AND LEGAL ANALYSIS**

The complaint does not allege that Citizens Consulting, Inc. ("CCI") violated the Act. CCI provides consulting services, including administrative, financial, bookkeeping, and legal support, primarily to nonprofit organizations. Some CCI clients use CCI's address as a point of contact for administrative functions. The only reference to Citizens Consulting Inc. in the complaint is that CCI has the same address as other respondents.

The facts alleged do not state a FECA violation. As it appears that CCI has no connection to the Edwards Committee, there is no reason to believe that CCI violated the Act.

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2 **FEDERAL ELECTION COMMISSION**

3 **FACTUAL AND LEGAL ANALYSIS**  
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5 **RESPONDENT:** Citizens Services, Inc.

MUR: 5970

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8 **I. INTRODUCTION**

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10 This matter was generated by a complaint filed with the Federal Election Commission by  
11 Lori Sherwood. See 2 U.S.C. § 437g(a)(1).

12 **II. FACTUAL AND LEGAL ANALYSIS**

13 The complaint states that Donna Edwards for Congress ("Committee") paid \$76,866 to  
14 Citizens Services, Inc. ("CSI") for get-out-the-vote activities. The complaint alleges that CSI, a  
15 nonprofit organization, received money in a coordinated effort with the Committee and engaged  
16 in political activity.

17 CSI is a Louisiana nonprofit corporation that provides consulting and field services to a  
18 number of different clients. CSI states that it is a vendor and had a contract with the Edwards  
19 Committee to perform get-out-the-vote canvassing and phone bank operations, which the  
20 Edwards Committee paid for and disclosed in its disclosure reports. CSI further states that its  
21 contact with the Committee constituted a standard commercial transaction between a campaign  
22 and a vendor. CSI also subcontracted some of the work to a third-party.

23 The Committee paid CSI for work, and CSI appears to have operated as a vendor. As a  
24 result, the facts alleged do not state a violation of the Act, and there is no reason to believe that  
25 CSI violated the Act.

**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS: Communities Voting Together**

**MUR: 5970**

**I. INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission by Lori Sherwood. See 2 U.S.C. § 437g(a)(1).

**II. FACTUAL AND LEGAL ANALYSIS**

Communities Voting Together ("CVT") is a public advocacy, unincorporated association. The complaint alleges that CVT disseminated a mailer, which constitutes an excessive and unreported contribution to Donna Edwards for Congress ("Committee"). The complaint further alleges that CVT hired canvassers to assist the Edwards campaign.

CVT states that it disseminated issue advocacy leaflets in 2006 and 2008 that referred to Edwards' opponent in the 2006 and 2008 primaries, Albert Wynn. CVT did not discuss the leaflets with the Edwards campaign. The Executive Vice President of CSI, who was responsible for the 2006 and 2008 projects, attests that he did not discuss the projects with other CSI employees except as necessary to implement them, and he had no information regarding needs, plans, projects, or activities of the Edwards campaign. CVT further states that it hired CSI, a common vendor with the Committee, to create and disseminate CVT issue advocacy leaflets, but not to "assist the Edwards campaign." The leaflets were mailed in 2006 and mailed and hand-delivered in 2008.

1       The Act, as amended by BCRA, provides that no person shall make contributions to any  
2 candidate and his or her authorized political committee with respect to any election for federal  
3 office, which, in the aggregate, exceed \$2,300. 2 U.S.C. § 441a(a)(1)(A).

4       Under the Act and Commission regulations, the terms "contribution" and "expenditure"  
5 include any gift of money or "anything of value" made by any person for the purpose of  
6 influencing a Federal election. *See* 2 U.S.C. § 431(8)(A)(i) and (9)(A)(i); 11 C.F.R. §§  
7 100.52(a) and 100.111(a). The phrase "anything of value" includes all in-kind contributions. *See*  
8 11 C.F.R. §§ 100.52(d)(1) and 100.111(e)(1). In-kind contributions include expenditures made  
9 by any person "in cooperation, consultation, or concert, with, or at the request or suggestion of" a  
10 candidate, a candidate's authorized committees, or their agents. 2 U.S.C. § 441a(a)(7)(B)(i).

11       Commission regulations specify a three-prong test to determine whether a payment for a  
12 communication becomes an in-kind contribution as a result of coordination between the person  
13 making the payment and a candidate. *See* 11 C.F.R. § 109.21(a)(1)-(3). Under the first prong of  
14 the coordinated communication test, the communication must be paid for by a person other than  
15 a candidate, a candidate's authorized committee, a political party committee, or agents of any of  
16 the foregoing. *See* 11 C.F.R. § 109.21(a)(1). Under the second prong, the communication must  
17 satisfy one of the four content standards set forth in 11 C.F.R. § 109.21(c).<sup>1</sup> Under the third

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<sup>1</sup> After the decision in *Shays v. FEC*, 414 F.3d 76 (D.C. Cir. 2005) (Court of Appeals affirmed the District Court's invalidation of the fourth, or "public communication," content standard of the coordinated communications regulation), the Commission made revisions to 11 C.F.R. § 109.21 that became effective July 10, 2006. In a subsequent challenge by Shays, the U.S. District Court for the District of Columbia held that the Commission's content and conduct standards of the coordinated communications regulation at 11 C.F.R. § 109.21(c) and (d) violated the Administrative Procedure Act; however, the court did not vacate the regulations or enjoin the Commission from enforcing them. *See Shays v. FEC*, 508 F.Supp.2d 10, 70-71 (D.D.C. Sept. 12, 2007) (NO. CIV.A. 06-1247 (CKJ)) (granting in part and denying part the respective parties' motions for summary judgment). Recently, the D.C. Circuit affirmed the district court with respect to, *inter alia*, the content standard for public communications made before the time frames specified in the standard, and the rule for when former campaign employees and common vendors may share material information with other persons who finance public communications. *See Shays v. FEC*, \_\_\_ F.3d \_\_\_, (D.C. Cir. 2008).

1 prong, the communication must satisfy one of the five conduct standards set forth in 11 C.F.R.

2 § 109.21(d).<sup>2</sup>

3 CVT's response, including affidavits, sufficiently rebuts the complaint's vague  
4 allegations that CVT and the Committee coordinated the CVT leaflets. The response specifically  
5 rebuts allegations that CVT and the Committee engaged in conduct that would meet the  
6 requirements of 11 C.F.R. § 109.21(d). Furthermore, the 2006 leaflet, and purportedly similar  
7 2008 leaflet, are issue focused and ask the reader to call Albert Wynn to explain his energy  
8 policies. Therefore, there is no reason to believe that CVT violated 2 U.S.C. § 441a(a)(1) by  
9 making an excessive in-kind contribution in the form of a coordinated communication.

<sup>2</sup> The conduct prong is satisfied where any of the following types of conduct occurs: (1) the communication was created, produced or distributed at the request or suggestion of a candidate or his campaign; (2) the candidate or his campaign was materially involved in decisions regarding the communication; (3) the communication was created, produced, or distributed after substantial discussions with the campaign or its agents; (4) the parties contracted with or employed a common vendor that used or conveyed material information about the campaign's plans, projects, activities or needs, or used material information gained from past work with the candidate to create, produce, or distribute the communication; (5) the payor employed a former employee or independent contractor of the candidate who used or conveyed material information about the campaign's plans, projects, activities or needs, or used material information gained from past work with the candidate to create, produce, or distribute the communication; or (6) the payor republished campaign material. See 11 C.F.R. § 109.21(d).

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3  
4 **RESPONDENT:** League of Conservation Voters

**MUR: 5970**

5  
6  
7 **I. INTRODUCTION**

8  
9 This matter was generated by a complaint filed with the Federal Election Commission by  
10 Lori Sherwood. See 2 U.S.C. § 437g(a)(1).

11 **II. FACTUAL AND LEGAL ANALYSIS**

12 Donna Edwards is the Executive Director of the ARCA Foundation ("ARCA"). She is  
13 also on the Board of Directors of the League of Conservation Voters ("LCV"), an environmental  
14 advocacy group. The complaint alleges that LCV made excessive contributions to Donna  
15 Edwards for Congress ("Committee") and excessive in-kind contributions through coordination  
16 with the Committee.

17 **A. Excessive In-Kind Contributions**

18 The complaint alleges that because ARCA gave money to LCV, LCV gave money to  
19 Edwards and promoted her campaign. The complaint alleges the LCV contributions constitute  
20 excessive in-kind contributions.

21 LCV states that it did not receive a grant from ARCA; the LCV Education Fund, a  
22 501(c)(3) organization, did. LCV further notes that the LCV Education Fund began to receive  
23 grants from ARCA in 1999, before Edwards started working there.

24 The LCV Political Action Committee made a contribution to the Edwards Committee,  
25 and individuals associated with LCV made individual contributions, all within legal limits.

26 There is no information suggesting that contributions to Edwards from LCV's PAC and

1 individuals employed by LCV were given in exchange for a grant to LCV Education Fund.

2 Therefore, there is no reason to believe that LCV violated 2 U.S.C. § 441a(a)(1) by making  
3 excessive in-kind contributions to Edwards.

4 **B. Coordination**

5 The complaint further alleges that there is an “appearance of coordination” between LCV  
6 and the Committee.

7 LCV states that it conducted an independent expenditure campaign on behalf of Edwards.  
8 LCV had a firewall in place, which included no communications with Edwards, her campaign  
9 staff or volunteers, no unauthorized comments to the press, and no unauthorized volunteer efforts  
10 for her campaign. LCV Board members and staff were given specific instructions and reminders  
11 on firewall procedures. Edwards also was granted a leave of absence from the LCV Board as  
12 soon as she announced her 2008 candidacy. In sum, Edwards was “ex-communicated.” In  
13 addition, LCV states that its independent expenditures were properly reported.

14 Under the Act and Commission regulations, the terms “contribution” and “expenditure”  
15 include any gift of money or “anything of value” made by any person for the purpose of  
16 influencing a Federal election. See 2 U.S.C. §§ 431(8)(A)(i) and (9)(A)(i); 11 C.F.R. §§  
17 100.52(a) and 100.111(a). The phrase “anything of value” includes all in-kind contributions. See  
18 11 C.F.R. §§ 100.52(d)(1) and 100.111(e)(1). In-kind contributions include expenditures made  
19 by any person “in cooperation, consultation, or concert, with, or at the request or suggestion of” a  
20 candidate, a candidate’s authorized committees, or their agents. 2 U.S.C. § 441a(a)(7)(B)(i).

21 Commission regulations specify a three-prong test to determine whether a payment for a  
22 communication becomes an in-kind contribution as a result of coordination between the person

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1 making the payment and a candidate. See 11 C.F.R. § 109.21(a)(1)-(3). Under the first prong of  
2 the coordinated communication test, the communication must be paid for by a person other than  
3 a candidate, a candidate's authorized committee, a political party committee, or agents of any of  
4 the foregoing. See 11 C.F.R. § 109.21(a)(1). Under the second prong, the communication must  
5 satisfy one of the four content standards set forth in 11 C.F.R. § 109.21(c).<sup>1</sup> Under the third  
6 prong, the communication must satisfy one of the five conduct standards set forth in 11 C.F.R.  
7 § 109.21(d).<sup>2</sup>

8 The complaint's allegations are vague, and LCV has responded that it "ex-  
9 communicated" Edwards by granting her a leave of absence from its Board of Directors and  
10 through implementation of its firewall policy. Based on the absence of facts alleging conduct  
11 that would constitute coordination and LCV's specific response, there is no information that the  
12 conduct standard of the coordination regulations has been met. See 11 C.F.R. § 109.21(d).

<sup>1</sup> After the decision in *Shays v. FEC*, 414 F.3d 76 (D.C. Cir. 2005) (Court of Appeals affirmed the District Court's invalidation of the fourth, or "public communication," content standard of the coordinated communications regulation), the Commission made revisions to 11 C.F.R. § 109.21 that became effective July 10, 2006. In a subsequent challenge by Shays, the U.S. District Court for the District of Columbia held that the Commission's content and conduct standards of the coordinated communications regulation at 11 C.F.R. § 109.21(c) and (d) violated the Administrative Procedure Act; however, the court did not vacate the regulations or enjoin the Commission from enforcing them. See *Shays v. FEC*, 508 F.Supp.2d 10, 70-71 (D.D.C. Sept. 12, 2007) (NO. CIV.A. 06-1247 (CKK)) (granting in part and denying part the respective parties' motions for summary judgment). Recently, the D.C. Circuit affirmed the district court with respect to, *inter alia*, the content standard for public communications made before the time frames specified in the standard, and the rule for when former campaign employees and common vendors may share material information with other persons who finance public communications. See *Shays v. FEC*, \_\_\_ F.3d \_\_\_, (D.C. Cir. 2008).

<sup>2</sup> The conduct prong is satisfied where any of the following types of conduct occurs: (1) the communication was created, produced or distributed at the request or suggestion of a candidate or his campaign; (2) the candidate or his campaign was materially involved in decisions regarding the communication; (3) the communication was created, produced, or distributed after substantial discussions with the campaign or its agents; (4) the parties contracted with or employed a common vendor that used or conveyed material information about the campaign's plans, projects, activities or needs, or used material information gained from past work with the candidate to create, produce, or distribute the communication; (5) the payor employed a former employee or independent contractor of the candidate who used or conveyed material information about the campaign's plans, projects, activities or needs, or used material information gained from past work with the candidate to create, produce, or distribute the communication; or (6) the payor republished campaign material. See 11 C.F.R. § 109.21(d).

**League of Conservation Voters  
MUR 5970  
Factual and Legal Analysis**

- 1 Therefore, there is no reason to believe that LCV violated 2 U.S.C. § 441a(a)(1) by making an**
- 2 excessive in-kind contribution in the form of a coordinated communication.**

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1  
2 **FEDERAL ELECTION COMMISSION**

3 **FACTUAL AND LEGAL ANALYSIS**  
4

5 **RESPONDENTS:** 1199 SEIU and 1199 SEIU Federal PAC MUR: 5970  
6 and Patrick Gaspard, in his official capacity as Treasurer  
7

8  
9 **I. INTRODUCTION**  
10

11 This matter was generated by a complaint filed with the Federal Election Commission by  
12 Lori Sherwood. See 2 U.S.C. § 437g(a)(1).  
13

14 **II. FACTUAL AND LEGAL ANALYSIS**

15 The complaint alleges that 1199 SEIU United Healthcare Workers East ("1199 SEIU")  
16 and Donna Edwards for Congress ("Committee") may have "collaborated" in the dissemination  
17 of campaign literature. The complaint also alleges that candidate Edwards and Anna Burger, the  
18 SEIU national political head, co-founded They Work For Us, Inc.

19 1199 SEIU states that the 1199 SEIU Federal Political Action Fund ("1199 SEIU PAC")  
20 produced, paid for and mailed literature in support of Edwards' 2008 campaign as part of an  
21 independent expenditure effort. The PAC treasurer attests that no one associated with 1199  
22 SEIU discussed the literature with Edwards or anyone affiliated with the campaign and that there  
23 is a firewall in place. The treasurer checked with the literature vendor to confirm that the vendor  
24 had no contract or contact with the Edwards Committee. The only contact the treasurer had with  
25 Edwards was to tell her about 1199 SEIU's endorsement of her. Furthermore, the treasurer states  
Anna Burger is not associated with the 1199 PAC.

1 The Act, as amended by BCRA, provides that no person shall make contributions to any  
2 candidate and his or her authorized political committee with respect to any election for federal  
3 office, which, in the aggregate, exceed \$2,300. 2 U.S.C. § 441a(a)(1)(A).

4 Under the Act and Commission regulations, the terms "contribution" and "expenditure"  
5 include any gift of money or "anything of value" made by any person for the purpose of  
6 influencing a Federal election. See 2 U.S.C. §§ 431(8)(A)(i) and (9)(A)(i); 11 C.F.R. §§  
7 100.52(a) and 100.111(a). The phrase "anything of value" includes all in-kind contributions. See  
8 11 C.F.R. §§ 100.52(d)(1) and 100.111(e)(1). In-kind contributions include expenditures made  
9 by any person "in cooperation, consultation, or concert, with, or at the request or suggestion of" a  
10 candidate, a candidate's authorized committees, or their agents. 2 U.S.C. § 441a(a)(7)(B)(i).

11 Commission regulations specify a three-prong test to determine whether a payment for a  
12 communication becomes an in-kind contribution as a result of coordination between the person  
13 making the payment and a candidate. See 11 C.F.R. § 109.21(a)(1)-(3). Under the first prong of  
14 the coordinated communication test, the communication must be paid for by a person other than  
15 a candidate, a candidate's authorized committee, a political party committee, or agents of any of  
16 the foregoing. See 11 C.F.R. § 109.21(a)(1). Under the second prong, the communication must  
17 satisfy one of the four content standards set forth in 11 C.F.R. § 109.21(c).<sup>1</sup> Under the third

<sup>1</sup> After the decision in *Shays v. FEC*, 414 F.3d 76 (D.C. Cir. 2005) (Court of Appeals affirmed the District Court's invalidation of the fourth, or "public communication," content standard of the coordinated communications regulation), the Commission made revisions to 11 C.F.R. § 109.21 that became effective July 10, 2006. In a subsequent challenge by Shays, the U.S. District Court for the District of Columbia held that the Commission's content and conduct standards of the coordinated communications regulation at 11 C.F.R. § 109.21(c) and (d) violated the Administrative Procedure Act; however, the court did not vacate the regulations or enjoin the Commission from enforcing them. See *Shays v. FEC*, 508 F.Supp.2d 10, 70-71 (D.D.C. Sept. 12, 2007) (NO. CIV.A. 06-1247 (CKK)) (granting in part and denying part the respective parties' motions for summary judgment). Recently, the D.C. Circuit affirmed the district court with respect to, *inter alia*, the content standard for public communications made before the time frames specified in the standard, and the rule for when former campaign employees and common vendors may share material information with other persons who finance public communications. See *Shays v. FEC*, \_\_\_ F.3d \_\_\_, (D.C. Cir. 2008).

1 prong, the communication must satisfy one of the five conduct standards set forth in 11 C.F.R.

2 § 109.21(d).<sup>2</sup>

3       The complaint's broad legal conclusion that 1199 SEIU and 1199 SEIU PAC  
4 "collaborated" is not supported by facts. Moreover, 1199 SEIU and 1199 SEIU PAC have set  
5 forth that there was no communication with Edwards or her campaign regarding the literature,  
6 and that the vendor had no contact with them either. Thus, it appears that the conduct standard of  
7 the coordination regulations has not been met. See 11 C.F.R. § 109.21(d). Therefore, there is no  
8 reason to believe that 1199 SEIU and 1199 SEIU PAC and Patrick Gaspard, in his official  
9 capacity as Treasurer, violated 2 U.S.C. § 441a(a)(1) by making an excessive in-kind  
10 contribution in the form of a coordinated communication.

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<sup>2</sup> The conduct prong is satisfied where any of the following types of conduct occurs: (1) the communication was created, produced or distributed at the request or suggestion of a candidate or his campaign; (2) the candidate or his campaign was materially involved in decisions regarding the communication; (3) the communication was created, produced, or distributed after substantial discussions with the campaign or its agents; (4) the parties contracted with or employed a common vendor that used or conveyed material information about the campaign's plans, projects, activities or needs, or used material information gained from past work with the candidate to create, produce, or distribute the communication; (5) the payor employed a former employee or independent contractor of the candidate who used or conveyed material information about the campaign's plans, projects, activities or needs, or used material information gained from past work with the candidate to create, produce, or distribute the communication; or (6) the payor republished campaign material. See 11 C.F.R. § 109.21(d).

**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT: SEIU Local 100**

**MUR: 5970**

**I. INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission by Lori Sherwood. See 2 U.S.C. § 437g(a)(1).

**II. FACTUAL AND LEGAL ANALYSIS**

The complaint states that SEIU Local 100 has the same address as some other organizations and also states that the chief organizer of SEIU Local 100 is the founder of ACORN, a nonprofit organization. The complaint implies that SEIU Local 100 must have collaborated with other organizations at the same address to benefit Donna Edwards for Congress ("Committee").

SEIU Local 100 is a labor organization representing employees in Louisiana, Texas, and Arkansas. It has no operations in Maryland. SEIU Local 100 states that to the extent the complaint implies any improper conduct in the Edwards campaign, it is denied. SEIU Local 100 was not involved with the campaign. SEIU Local 100 did not contribute to or cooperate with the Edwards Committee.

The facts alleged do not state a FECA violation. As it appears that SEIU Local 100 has no connection to the Edwards Committee, there is no reason to believe that SEIU Local 100 violated the Act.

1  
2 **FEDERAL ELECTION COMMISSION**

3 **FACTUAL AND LEGAL ANALYSIS**  
4

5 **RESPONDENTS:** They Work For Us, Inc.

MUR: 5970

6  
7  
8 **I. INTRODUCTION**

9  
10 This matter was generated by a complaint filed with the Federal Election Commission by  
11 Lori Sherwood. See 2 U.S.C. § 437g(a)(1).

12 **II. FACTUAL AND LEGAL ANALYSIS**

13 The complaint alleges that They Work For Us ("TWFU") "apparently facilitated  
14 placement of political ads in conjunction with SEIU [Service Employees International Union]."  
15 The complaint further alleges that TWFU has become a conduit for campaign contributions and  
16 an alleged 501(c)(4) "lobbying wing," and that Donna Edwards for Congress ("Committee")  
17 coordinated with TWFU.

18 TWFU is a nonprofit, social welfare organization that promotes public awareness of votes  
19 and other actions by Congressional members. TWFU states that Donna Edwards is on the Board  
20 of Directors of TWFU. She recused herself from TWFU Board discussions regarding the race in  
21 Maryland District 4 since shortly after she announced her candidacy in April 2007. She took a  
22 leave of absence from her position as director of TWFU in August 2007. TWFU states that it  
23 never made a monetary contribution or provided any goods, services, or any other thing of value  
24 to the Edwards campaign.

25 It appears that TWFU did, however, fund a radio broadcast that referred to Edwards'  
26 opponent shortly before the February 2008 Primary. See TWFU Response to the Reports

**Analysis Division, May 22, 2008. TWFU filed a Form 9 with the Commission to disclose this  
Electioneering Communication (albeit late). We have not been able to obtain a copy of the radio  
ad.**

**The Act, as amended by BCRA, provides that no person shall make contributions to any  
candidate and his or her authorized political committee with respect to any election for federal  
office, which, in the aggregate, exceed \$2,300. 2 U.S.C. § 441a(a)(1)(A).**

**Under the Act and Commission regulations, the terms "contribution" and "expenditure"  
include any gift of money or "anything of value" made by any person for the purpose of  
influencing a Federal election. See 2 U.S.C. §§ 431(8)(A)(i) and (9)(A)(i); 11 C.F.R. §§  
100.52(a) and 100.111(a). The phrase "anything of value" includes all in-kind contributions. See  
11 C.F.R. §§ 100.52(d)(1) and 100.111(e)(1). In-kind contributions include expenditures made  
by any person "in cooperation, consultation, or concert, with, or at the request or suggestion of" a  
candidate, a candidate's authorized committees, or their agents. 2 U.S.C. § 441a(a)(7)(B)(i).**

**Commission regulations specify a three-prong test to determine whether a payment for a  
communication becomes an in-kind contribution as a result of coordination between the person  
making the payment and a candidate. See 11 C.F.R. § 109.21(a)(1)-(3). Under the first prong of  
the coordinated communication test, the communication must be paid for by a person other than  
a candidate, a candidate's authorized committee, a political party committee, or agents of any of  
the foregoing. See 11 C.F.R. § 109.21(a)(1). Under the second prong, the communication must**



1 satisfy one of the four content standards set forth in 11 C.F.R. § 109.21(c).<sup>1</sup> Under the third  
2 prong, the communication must satisfy one of the five conduct standards set forth in 11 C.F.R.  
3 § 109.21(d).<sup>2</sup>

4 The vague allegation that TWFU worked with SEIU, another non-profit organization,  
5 does not constitute coordination. See 11 C.F.R. § 109.21(a). TWFU states that it never provided  
6 anything of value to the Edwards campaign and that no one at TWFU had any contacts with her  
7 or her campaign since April 2007.

8 Moreover, based on the facts alleged and the response, there is no information that the  
9 conduct standard of the coordination regulations has been satisfied, as the radio ads aired in early  
10 2008 and the last communications between TWFU and Edwards appear to have been in early to  
11 mid-2007. Therefore, there is no reason to believe that TWFU violated 2 U.S.C. § 441a(a)(1) by  
12 making an excessive in-kind contribution in the form of a coordinated communication.

<sup>1</sup> After the decision in *Shays v. FEC*, 414 F.3d 76 (D.C. Cir. 2005) (Court of Appeals affirmed the District Court's invalidation of the fourth, or "public communication," content standard of the coordinated communications regulation), the Commission made revisions to 11 C.F.R. § 109.21 that became effective July 10, 2006. In a subsequent challenge by Shays, the U.S. District Court for the District of Columbia held that the Commission's content and conduct standards of the coordinated communications regulation at 11 C.F.R. § 109.21(c) and (d) violated the Administrative Procedure Act; however, the court did not vacate the regulations or enjoin the Commission from enforcing them. See *Shays v. FEC*, 508 F.Supp.2d 10, 70-71 (D.D.C. Sept. 12, 2007) (NO. CIV.A. 06-1247 (CKK)) (granting in part and denying part the respective parties' motions for summary judgment). Recently, the D.C. Circuit affirmed the district court with respect to, *inter alia*, the content standard for public communications made before the time frames specified in the standard, and the rule for when former campaign employees and common vendors may share material information with other persons who finance public communications. See *Shays v. FEC*, \_\_\_ F.3d \_\_\_, (D.C. Cir. 2008).

<sup>2</sup> The conduct prong is satisfied where any of the following types of conduct occurs: (1) the communication was created, produced or distributed at the request or suggestion of a candidate or his campaign; (2) the candidate or his campaign was materially involved in decisions regarding the communication; (3) the communication was created, produced, or distributed after substantial discussions with the campaign or its agents; (4) the parties contracted with or employed a common vendor that used or conveyed material information about the campaign's plans, projects, activities or needs, or used material information gained from past work with the candidate to create, produce, or distribute the communication; (5) the payor employed a former employee or independent contractor of the candidate who used or conveyed material information about the campaign's plans, projects, activities or needs, or used material information gained from past work with the candidate to create, produce, or distribute the communication; or (6) the payor republished campaign material. See 11 C.F.R. § 109.21(d).

**FEDERAL ELECTION COMMISSION  
FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:**    **EMILY's List and  
Ranny Cooper, in his official capacity as treasurer**

**MUR: 5970**

**I.     INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission by Lori Sherwood. *See* 2 U.S.C. § 437g(a)(1).

**II.    FACTUAL AND LEGAL ANALYSIS**

The complaint alleges that EMILY's List and Donna Edwards for Congress ("Committee") have "clearly joined forces" because EMILY's list sent an email promoting Edwards' candidacy, and it was approved and authorized by Edwards.

EMILY's List is an organization that works to get pro-choice Democratic women elected to public office. EMILY's List states that the complaint does not allege a violation of FECA. EMILY's List acknowledges that it sent an email soliciting contributions on behalf of Edwards. EMILY's List states, however, that the Edwards Committee authorized and paid for the email. EMILY's List further states that it has a firewall to protect itself from speculative allegations of coordination.

The Act, as amended by BCRA, provides that no person shall make contributions to any candidate and his or her authorized political committee with respect to any election for federal office, which, in the aggregate, exceed \$2,300. 2 U.S.C. § 441a(a)(1)(A).

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Under the Act and Commission regulations, the terms "contribution" and "expenditure" include any gift of money or "anything of value" made by any person for the purpose of influencing a Federal election. See 2 U.S.C. §§ 431(8)(A)(i) and (9)(A)(i); 11 C.F.R. §§ 100.52(a) and 100.111(a). The phrase "anything of value" includes all in-kind contributions. See 11 C.F.R. §§ 100.52(d)(1) and 100.111(e)(1). In-kind contributions include expenditures made by any person "in cooperation, consultation, or concert, with, or at the request or suggestion of" a candidate, a candidate's authorized committees, or their agents. 2 U.S.C. § 441a(a)(7)(B)(i).

Commission regulations specify a three-prong test to determine whether a payment for a communication becomes an in-kind contribution as a result of coordination between the person making the payment and a candidate. See 11 C.F.R. § 109.21(a)(1)-(3). Under the first prong of the coordinated communication test, the communication must be paid for by a person other than a candidate, a candidate's authorized committee, a political party committee, or agents of any of the foregoing. See 11 C.F.R. § 109.21(a)(1). Under the second prong, the communication must satisfy one of the four content standards set forth in 11 C.F.R. § 109.21(c).<sup>1</sup> Under the third

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<sup>1</sup> After the decision in *Shays v. FEC*, 414 F.3d 76 (D.C. Cir. 2005) (Court of Appeals affirmed the District Court's invalidation of the fourth, or "public communication," content standard of the coordinated communications regulation), the Commission made revisions to 11 C.F.R. § 109.21 that became effective July 10, 2006. In a subsequent challenge by Shays, the U.S. District Court for the District of Columbia held that the Commission's content and conduct standards of the coordinated communications regulation at 11 C.F.R. § 109.21(c) and (d) violated the Administrative Procedure Act; however, the court did not vacate the regulations or enjoin the Commission from enforcing them. See *Shays v. FEC*, 508 F.Supp.2d 10, 70-71 (D.D.C. Sept. 12, 2007) (NO. CIV.A. 06-1247 (CKK)) (granting in part and denying part the respective parties' motions for summary judgment). Recently, the D.C. Circuit affirmed the district court with respect to, *inter alia*, the content standard for public communications made before the time frames specified in the standard, and the rule for when former campaign employees and common vendors may share material information with other persons who finance public communications. See *Shays v. FEC*, \_\_\_ F.3d \_\_\_, (D.C. Cir. 2008).

prong, the communication must satisfy one of the five conduct standards set forth in 11 C.F.R.

§ 109.21(d).<sup>2</sup>

EMILY's List has set forth specific facts to refute charges of coordination, including that the Committee paid for the communication. Thus, the payment prong of the coordination regulations is not met. See 11 C.F.R. § 109.21(a)(1). Therefore, there is no reason to believe that EMILY's List and Ranny Cooper, in his official capacity as Treasurer, violated 2 U.S.C. § 441a(a)(1) by making an excessive in-kind contribution in the form of a coordinated communication.

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<sup>2</sup> The conduct prong is satisfied where any of the following types of conduct occurs: (1) the communication was created, produced or distributed at the request or suggestion of a candidate or his campaign; (2) the candidate or his campaign was materially involved in decisions regarding the communication; (3) the communication was created, produced, or distributed after substantial discussions with the campaign or its agents; (4) the parties contracted with or employed a common vendor that used or conveyed material information about the campaign's plans, projects, activities or needs, or used material information gained from past work with the candidate to create, produce, or distribute the communication; (5) the payor employed a former employee or independent contractor of the candidate who used or conveyed material information about the campaign's plans, projects, activities or needs, or used material information gained from past work with the candidate to create, produce, or distribute the communication; or (6) the payor republished campaign material. See 11 C.F.R. § 109.21(d).